STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

[redacted]

PETITIONER,

Vs.

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES
CIRCUIT: 04 Nassau
UNIT: 88778

RESPONDENT.
_____/

APPEAL NO. 14F-10860

CASE NO. [redacted]

FINAL ORDER

Pursuant to notice, the undersigned reconvened a telephonic administrative hearing in the above-referenced matter on March 12, 2015 at 10:22 a.m.

APPEARANCES

For the Petitioner: [redacted] son to the petitioner.

For the Respondent: Matthew Lynn, Economic Self-Sufficiency Specialist II for the Department of Children Families (DCF).

STATEMENT OF ISSUE

The petitioner is appealing the denial of her request for Institutional Care Program (ICP) Medicaid coverage for the months of August 2014 through October 2014.

PRELIMINARY STATEMENT

The hearing originally convened on February 3, 2015. The hearing was rescheduled to March 12, 2015 after it was found necessary to reconvene and take testimony from the Comprehensive Assessment, Review, and Evaluation Services (CARES) unit with the Department of Elder Affairs (DOEA) as respondent's witness.

Appearing as a witness for the petitioner was [redacted] business office manager for the [redacted] in Hilliard, Florida.

Appearing as a witness for the respondent was Karen Swindler, Program Operations Administrator for the CARES unit with the Department of Elder Affairs.

The record was held open until 5:00 p.m. on March 12, 2015 to allow the respondent to provide additional evidence. Evidence was received via email; however, it does not appear that a copy of the evidence was forwarded to the petitioner and the petitioner's representative. The Notice of Exparte Communication was issued to place on the record the ex-parte communication with attachments. The additional evidence was excluded as an exhibit and was not used in making the final decision.

FINDINGS OF FACT

1. On June 26, 2014, the petitioner's son applied for ICP-Medicaid on his mother's behalf. Petitioner's son was asked to provide the form 3008 (collects medical information from physician) and level of care. As a result of not receiving the necessary information, the application was denied.

2. The petitioner (age 82) was admitted into [redacted] on July 29, 2014. She was discharged from Baptist Hospital to the nursing facility.

3. A subsequent ICP application was filed on August 13, 2014. The applicant was asked to provide medical form to CARES by September 19, 2014.

4. A medical LOC is determined by CARES of the Department of Elder Affairs for all ICP applicants to determine appropriate placement. ICP Medicaid cannot be approved until this step is completed. A complete form 3008 from a physician is required for CARES to determine if an individual meets a LOC for nursing home placement.

5. The Department forwarded petitioner's form 3008 to CARES on August 13, 2014. CARES staff replied that it was unable to complete the LOC process until a medical form 3008 could be provided; three attempts were made to obtain a current AHCA Medical Form 3008. The Department denied this ICP application due to no LOC.

6. A subsequent ICP application was filed on November 10, 2014 requesting retroactive Medicaid for the prior three months.

7. The Level I Pre-Admission Screen and Resident Review (PASRR) form is a Florida Medicaid form designed to collect and screen mental health patients for appropriate placement. The form was completed on August 1, 2014 by RJ, [redacted]

8. The Level I PASRR Screen and Determination form includes the petitioner's admitting diagnosis to the nursing facility as dementia for her primary diagnosis and anxiety as her secondary. The form instructs:

> If any item in 1A or 1B is checked and any item in numbers 2, 3, or 4 in the guide below is checked Yes, then the individual is suspected to have an indication of, or a diagnosis of, a serious mental illness or mental

retardation, or related condition. Part A and/or Part B in Section II below must also be checked Yes.

9. Item 1A of the Level I PASRR Screen and Determination form includes the question: "Is there an indication the individual has a diagnosis of (check those that apply)". The diagnoses included: "Severe Anxiety/Panic Disorder; Schizoaffective Disorder; Psychotic Disorder; Dysthymia; Schizophrenia; Prader-Willi Syndrome; Autism; Epilepsy; Childhood and Adolescent Disorder; Bipolar Disorder; Major Depression; Somatoform Disorder; Cyclothymia; Personality Disorder; Spina Bifida; Cerebal Palsy; and Mental Retardation with an IQ lower than 70." In the petitioner's case, none of the listed disorders were selected.

10. Item 1B includes the question: "Is there an indication that the individual has: Serious Mental Illness or Mental Retardation or related condition?" In the petitioner's case, none of the choices were selected. All items in numbers 2, 3, and 4 were answered "No". The screener was instructed to continue to Section II of the Level I PASSR Screen and Determination.

11. Section II: MI/MR of the Level I PASRR Screen and Determination includes Part A-Mental Illness. Part A includes the question: "Does the individual have indications of, or a diagnosis of, a serious mental illness as defined in the DSM-IV R, limited to schizophrenia, mood disorder, severe anxiety disorder, or a mental illness that may lead to a chronic disability?" Also included are the instructions: "The screener must answer all questions on the guide in Section I (see page 1) to determine a serious

mental illness. The question was marked "No". Part B-Mental Retardation includes the question:

> Does the individual have indications of, or a diagnosis of, mental retardation as defined in the AAMR Manual on Classification in Mental Retardation or other related conditions such as cerebral palsy, epilepsy, or any other conditions, including autistic disorders, that are closely related to mental retardation because it results in impairment of general intellectual functioning or adaptive behavior...which manifested prior to the age of 22?

12. The screener was reminded to answer all questions on the guide in Section I to determine mental retardation or related condition. The question under Part B was answered "No". The Level I screener was instructed to stop, sign, and date the level I screen if both parts were answered with "no". The screener signed and dated the Level I PASSR Screen and Determination.

13. The Respondent Exhibit 2, page 3 includes the Notification of LOC dated December 8, 2014. The Level II was completed by CARES on November 25, 2014. The PASRR included the notation that the PASRR I was completed post-admission by facility. The Department approved the petitioner's ICP Medicaid application on December 10, 2014, effective November 2014 as that was the first month the LOC was given by CARES.

14. The petitioner's witness argues that the facility was not prompted to evaluate the petitioner for a PASRR II due to the level I screening not showing a severe mental illness (SMI). Therefore, the petitioner's witness believed that a PASRR II referral to CARES was not necessary. It was not until the CARES staff came to the facility that it was determined a level II PASRR was needed. By this time it was November 2014.

15. The witness from CARES explained that Level I and Level II screenings are required for even a suspicion of a mental illness. If it is determined that there is a mental illness, the patient's case has to be forwarded to contracted agency for an evaluation. This process is in place to recommend appropriate placement of an individual with mental illness. The process is to take place before admission to a nursing facility. The screenings can be done in the community or the hospital.

16. The petitioner's witness acknowledges that the original 3008 was initiated at the hospital in July 2014; it was incomplete and had to be redone. The petitioner's witness contends that the 3008 completed in July 2014 had the petitioner's primary diagnosis listed as dementia and secondary as anxiety. The new 3008 was completed in October 2014 by the physician. The petitioner's Medicaid was approved in November 2014 due to the PASSR II completed on November 25, 2014. The petitioner's witness would like the level of care to be retroactive to August 1, 2014, when the PASSR I was completed by the facility.

17. If an individual is being considered to be admitted from the community and there is a suspicion of a mental illness, the resident's case is to be referred to CARES for screening. The PASRR I is required to be completed prior to an individual's admission into a nursing facility. CARES reviewed the 3008 completed by the physician which showed depression as a diagnosis. The respondent's witness contends that these rules have always been in place and are required before admission into a facility.

18. The 3008 form forwarded by the facility to CARES on October 30, 2014 shows that there was a suspicion of an SMI in the petitioner's case. Depression is listed

as the principal diagnosis and dementia is included as secondary. The diagnosis of depression is considered to be an SMI. The 3008 was forwarded to the APS Healthcare, who determined she was appropriate for nursing home placement; therefore, her PASSR II level of care was completed effective November 25, 2014.

19. The petitioner's witness argues that she has not had an issue in the past when the facility has completed the PASRR I after a resident's admission into the facility. The petitioner's witness argues that the original 3008 done in August 2014 listed the petitioner's primary diagnosis as dementia. Therefore, the facility did not know a PASSR II was required. Petitioner's son expressed the fact that dementia is certainly an indicator of a mental illness.

20. ICP Medicaid could not be approved for the months of August 2014 through October 2014 because the required level of care was not met until November 25, 2014.

CONCLUSIONS OF LAW

21. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

22. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

23. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

24. Federal Regulations at 42 CFR § 483.102 "Applicability and definitions" states:

> (a) This subpart applies to the screening or reviewing of all individuals with mental illness or intellectual disability who apply to or reside in Medicaid certified NFs regardless of the source of payment for the NF services, and regardless of the individual's or resident's known diagnoses.
> (b) *Definitions.* As used in this subpart—
> (1) An individual is considered to have a serious mental illness (MI) if the individual meets the following requirements on diagnosis, level of impairment and duration of illness:
> (i) *Diagnosis.* The individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987.
> This mental disorder is—
> (A) A schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability; **but**
> **(B) Not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined in paragraph (b)(1)(i)(A) of this section.** (emphasis added)

25. The findings show there were two medical 3008 forms completed on petitioner. One shows primary and secondary diagnoses as dementia and anxiety and the other shows depression and dementia as her diagnoses. Only the second medical 3008 form shows a "primary diagnosis of a major mental disorder of a schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability;" the second form showed depression (mood) as the primary diagnosis. Therefore, the undersigned concludes the level II screening was necessary.

26. Federal Regulations at 42 CFR § 483.126 Appropriate placement states:

> Placement of an individual with MI or IID in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services which can be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by specialized services provided by or arranged for by the State.

27. Federal Regulations at 42 CFR § 483.128 PASARR evaluation criteria states:

> (a) *Level I: Identification of individuals with MI or IID.* The State's PASARR program must identify all individuals who are suspected of having MI or IID as defined in § 483.102. This identification function is termed Level I. Level II is the function of evaluating and determining whether NF services and specialized services are needed. The State's performance of the Level I identification function must provide at least, in the case of first time identifications, for the issuance of written notice to the individual or resident and his or her legal representative that the individual or resident is suspected of having MI or IID and is being referred to the State mental health or intellectual disability authority for Level II screening.

28. Fla. Stat. §409.912 "Cost-effective purchasing of health care" states in relevant part:

> (14)(a) The agency shall operate the Comprehensive Assessment and Review for Long-Term Care Services (CARES) nursing facility preadmission screening program to ensure that Medicaid payment for nursing facility care is made only for individuals whose conditions require such care and to ensure that long-term care services are provided in the setting most appropriate to the needs of the person and in the most economical manner possible. The CARES program shall also ensure that individuals participating in Medicaid home and community-based waiver programs meet criteria for those programs, consistent with approved federal waivers.
>
> (b) The agency shall operate the CARES program through an interagency agreement with the Department of Elderly Affairs. The agency, in consultation with the Department of Elderly Affairs, may contract for any function or activity of the CARES program, including any function or activity required by 42 C.F.R. s. 483.20, relating to preadmission screening and resident review.

> (c) Prior to making payment for nursing facility services for a Medicaid recipient, the agency must verify that the nursing facility preadmission screening program has determined that the individual requires nursing facility care and that the individual cannot be safely served in community-based programs. The nursing facility preadmission screening program shall refer a Medicaid recipient to a community-based program if the individual could be safely served at a lower cost and the recipient chooses to participate in such program.

29. The above statute explains that CARES staff or its contracted entity must verify that the preadmission screening determined the individual requires nursing facility care before making any Medicaid payment for nursing facility services.

30. Fla. Admin. Code 59G-1.040 "Pre-Admission Screening and Resident Review" states:

> (1) Purpose.
> (a) The Pre-Admission Screening and Resident Review (PASRR) is a federal requirement mandated by the Social Security Act, Title 42, Subpart C, Sections 483.100 through 483.138, Code of Federal Regulations. It is intended to ensure that Medicaid-certified nursing facility applicants and residents with a diagnosis of or suspicion of serious mental illness or intellectual disabilities, or related conditions, are identified and admitted or allowed to remain in the nursing facility only if there is a verified need for such services.
> (b) PASRR is required for all applicants to Medicaid-certified nursing facilities, regardless of payor.
> (2) Definitions.
> (a) Adult(s) – Individuals who are age 21 and older.
> ...
> (c) CARES – The Florida Department of Elder Affairs' Comprehensive Assessment and Review for Long-Term Care Services program.
> ...
> (i) Level I PASRR Screener – The Agency for Health Care Administration (AHCA), or the entity to which AHCA delegates this responsibility, shall perform the Level I PASRR screening for all children. The CARES program or the entity to which CARES delegates this responsibility shall perform the Level I PASRR screening for all adults. AHCA and CARES will collectively be referred to as the Level I PASRR Screener.
> (k) Nursing Facility (NF) – A Medicaid-certified nursing facility.

(m) Serious Mental Illness (SMI) – As defined in the Social Security Act, Title 42, Subpart C, Section 483.102(b)(1), Code of Federal Regulations, an individual is considered to have an SMI, if the individual meets the following requirements on diagnosis, level of impairment, and duration of illness:
1. Diagnosis: A major mental disorder under the Diagnostic and Statistical Manual of Mental Disorders (3rd Ed., Revised 1987), incorporated by reference, such as a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability, but not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a nonprimary diagnosis of dementia unless the primary diagnosis is a major mental disorder. The Diagnostic and Statistical Manual of Mental Disorders (3rd Ed. R. 1987) is available for inspection at the Agency for Health Care Administration, Building 3, 2727 Mahan Drive, Tallahassee, Florida 32308.
...
(3) The Level I PASRR Screener must be notified whenever an individual is referred to an NF for admission.
(4) Level I PASRR.
(a) A Level I PASRR screening determines whether an individual referred for admission into an NF has or is suspected of having an SMI or an ID diagnosis or related conditions.
(b) A Level I PASRR must be completed for all individuals who are new admissions to an NF regardless of the source of payment.
(c) The Level I PASRR must be completed by the Level I PASRR Screener prior to an individual's admission to an NF.
...

31. The above controlling authority states the level I PASRR is to be completed by CARES for all adults. The screening is designed to be performed before admission to a nursing facility. When a level I screening indicates a mental illness, a Level II screening is required. A Level II screening is the function of evaluating and determining whether nursing facility services can meet the individual's needs with a mental health diagnosis and if specialized services are needed. The Department of Elder Affairs uses a contracted entity (APS Healthcare) to perform all of its level II mental health reviews.

32. "Florida Agency for Health Care Administration Pre-Admission Screen and Resident Review (PASRR) Instructions for Completion of the Level I Screen for Serious Mental Illness (SMI) and/or Intellectual Disability or Related Condition (ID)" effective November 2014[1] states in relevant part:

> A. Purpose
>
> The PASRR Level I screen identifies individuals who are suspected of having a serious mental illness (SMI); an intellectual disability or related condition (ID); or both. The Level I screen must be completed for all individuals prior to admission to a Medicaid-certified nursing facility (NF), including provisional or hospital discharge exempted admissions. The Level I screen may only be completed by an entity delegated to perform the Level I PASRR screen (listed below). See Rule 59G-1.040, Florida Administrative Code. If the Level I screen indicates an SMI or ID or both, or a finding of a significant change in an NF resident, the PASRR Level II evaluation must be completed.
>
> Please note: The Level I screen is to be used only for individuals either referred to or residing in an NF. The PASRR process must be completed regardless of payor source or age. A Level I PASRR screen does not need to be completed if (1) an individual is returning to the NF after being in a hospital for no more than 90 days; or (2) an NF resident is transferred to another NF. The following screeners are responsible for completion of a PASRR Level I:
>
> • Agency for Health Care Administration (or its delegate-the Florida Department of Health) for children under the age of 21years; and
>
> • Florida Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) for adults age 21years and older. CARES may delegate to hospital or NF staff (Physician, RN, MSW, LCSW).
>
> Section II: PASRR Level I Screen Decision-Making
>
> Steps to Complete Screen
>
> 1. Identify diagnoses: Review any pertinent medical records, if available, for diagnoses or suspicion of SMI or ID or both. Medical record sources can include but are not limited to: verbal interview with the individual or parent/legal guardian; the Medical Certification for Nursing Facility/Home-and-Community-Based Services Form (AHCA MedServ-3008); other legal representative; observation; progress notes; the most

[1] It is noted these instructions are effective the month ICP was approved. However this publication was found on AHCA's website and it was not provided at hearing; no earlier version was available.

recent annual physical exam, most recent history and physical records; hospital discharge summaries; or diagnosis list.

2. Indicate the source of all the information gathered if a diagnosis or suspicion of SMI or ID is found.

3. Include additional information if necessary.

• Please note: A Level II evaluation must be completed if any box in Section II.A is checked and there is a YES checked in Section III.1, III.2, or III.3.

• A Level II evaluation must be completed if any box in Section II.B is checked and (1) the intellectual disability manifested prior to 18 years of age or a related condition manifested before age 22, and (2) the condition is likely to continue indefinitely, resulting in functional limitations in three or more of the following: self-care, understanding and use of language, learning, mobility, self-direction or capacity for independent living.

• A Level II evaluation must be completed if Section III.4 is checked YES.

Section III: Other Indications for PASRR Screen Decision-Making

Check any box indicating any other indication or suspicion of SMI or ID, and add any additional information for basis of findings. The items listed in this section encourage the screener to "look behind" the diagnosis for any suspicion of SMI or ID.

• Please note: A Level II evaluation must be completed if any box in Section II.A is checked and there is a YES checked in Section III.1, III.2, or III.3.

• A Level II evaluation must be completed if any box in Section II.B is checked and (1) the intellectual disability manifested prior to 18 years of age or a related condition manifested before age 22, and (2) the condition is likely to continue indefinitely, resulting in functional limitations in three or more of the following: self-care, understanding and use of language, learning, mobility, self-direction or capacity for independent living.

A Level II evaluation must be completed if Section III.4 is checked YES.

33. The above AHCA instructions for the preadmission screening for mental illness indicates that CARES may delegate to hospital or Nursing Facility staff (Physician, RN, MSW, LCSW) the level I screening task. It is not clear if the case manager of the facility who completed petitioner's level I screening met one of these designated levels of training and education.

34. The Department's Program Policy Manual, 165-22, section 1440.0007 Medicaid - Technical Factors for ICP (MSSI) states: "Any Medicaid eligible individual applying for institutional care or HCBS or PACE services must meet the following requirements: 1. level of care/appropriate placement, 2. requirement to file for other benefits, and 3. transfer of assets provisions."

35. The Department's Program Policy Manual, 165-22, section 1440.1300 states:

> APPROPRIATE PLACEMENT (MSSI) To qualify for the Institutional Care Program (ICP) or Home and Community Based Services (HCBS), or the Program for All-Inclusive Care for the Elderly (PACE), the individual must meet special institutional eligibility criteria, including "appropriate placement."
>
> Appropriate placement means that an individual must be placed in a facility or program certified to provide the type and level of care the department has determined the individual requires.
> Two basic requirements must be met for placement to be considered appropriate. These are:
> the person must be determined by the department to be medically in need of the type of care provided by the specific program, AND
> the person must be actually receiving the services (or for HCBS, must be enrolled in the waiver) which the department has determined that the individual needs.
> To be appropriately placed for ICP, a person must have been determined in need of an ICP level of care (by CARES) and actually be placed in a Medicaid facility which provides the specified level of care.

36. The findings show that the petitioner was determined to have met the level of care effective November 25, 2014 and that nursing home placement was appropriate. This determination was made by CARES' contracted entity, APS Healthcare. However, in this case, the nursing facility staff completed the level I preadmission screening from a medical 3008 form stating the primary diagnosis was dementia and the secondary

was anxiety. The results of the AHCA level I preadmission screening form did not direct the screener to refer for a level II screening, therefore, petitioner was not referred for such upon admission or shortly thereafter (this also aligns with the controlling law, policies and procedures cited above). Once the latest ICP application was filed, petitioner was then referred to CARES who referred the mental health portion of the level of care to APS Healthcare. By this time there was a newer medical 3008 form completed which is the one APS staff reviewed to make the decision that petitioner did meet a nursing facility LOC.

37. The crux of this case comes down to the level I screening for a mental illness was based on different medical diagnoses that the level II screening was based on. The level II screener had a diagnosis (mood disorder) that met the definition cited above for a level II screening. That screener (APS Healthcare) determined even though petitioner was diagnosed with depression, she was appropriate for nursing home placement. The facts show that physicians first diagnosed petitioner with conditions absent a mood disorder and later diagnosed her with a mood disorder prompting a level II review.

38. In this case, the undersigned concludes petitioner actually met that level of care beginning August 2014. There was no evidence that her condition was any different in November 2014 than it was in August 2014. The only distinction is the date involved with the latest medical 3008 form potentially causing petitioner to lose ICP coverage for months prior to its completion. The undersigned concludes both petitioner and nursing facility followed proper procedure based on the medical information it had

at the time and met the burden of proof required in this case. Therefore, the appeal is granted.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is granted. The Department is to approve ICP Medicaid for August, September and October 2014 and issue the appropriate written notices.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 22 day of April, 2015,

in Tallahassee, Florida.

Paula Ali
Hearing Officer
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